ISSN 0708-5559

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BULLETIN 45

GOOD FENCES MAKE GOOD NEIGHBOURS

ADMINISTRATIVE PRACTICES AND PROCEDURES RELATED TO LINE FENCES

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Ontario Ministry of Intergovernmental Affairs

Hon. Thomas L. Wells
Minister

D. W. Stevenson
Deputy Minister

Municipal Operations Division
Municipal Administration Branch

March 1981

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To the Municipal Clerk:

Please circulate this bulletin or make copies for distribution to councillors or staff of your municipality who may be interested in the subject. Additional copies are available at a dollar each from the Publications Centre (see page 58).

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INTRODUCTION

The matter of fencing can give rise to disagreements, arguments and even violence between neighbours. A line fence may become the focal point for a multitude of real or imaginary issues. Municipal officials have always been called upon to assist taxpayers in regard to fences, and this role is recognized and defined in The Line Fences Act, 1979. Bulletin 32 covered highlights of that legislation.

This bulletin deals with administrative practices and procedures in respect to line fences, and with pertinent legislation other than The Line Fences Act. Wherever such legislation is mentioned, it should be remembered that the bulletin is not intended as a substitute for the statutes themselves.

Furthermore, because this is intended to be a practical guide, it reflects customs and recommendations of municipal administrators, rather than legal terminology and judicial decisions. Much of its contents are derived from the series of seminars on this topic, held across the Province under the auspices of the Rural Ontario Municipal Association and the Association of Municipal Clerks and Treasurers of Ontario.

Those interested in fencing should obtain a copy of the article "Fencing in Ontario", published in the Municipal World in 1971, revised and republished in September 1973. The author, Michael Smither, has recently published a useful and more detailed book, "Fences In Ontario", (available from the Municipal World Limited, Box 399, St. Thomas, Ontario N5P 3V3).

Copies of an office consolidation of the new Act (including the forms) are available from the Ontario Government Bookstore, 880 Bay Street, Toronto, Ontario M7A 1N8.

LEGISLATION

The main statute dealing with line fences is, of course, The Line Fences Act, 1979. One Regulation to date under the Act sets out the prescribed forms, fifteen in all; a copy is included as an appendix to this bulletin. A second Regulation covers territory without municipal organization.

Parts of The Interpretation Act may have a bearing on line-fence matters. For example, section 27 permits municipalities to make changes to prescribed forms so long as the meaning is consistent with the legislation. Thus, Form 7 deals with re-attendance by fence-viewers in connection with an "award". However, an award may have been modified by a judge on appeal, and in such circumstances it would be appropriate for the municipal clerk to add "as amended by judge of # ____ Small Claims Court in the County of _____"; or similar words, to Form 7. (Bulletin 30 in this series covers some aspects of The Interpretation Act in more detail).

It should be noted that the fence-viewers constitute a "tribunal" under The Statutory Powers Procedure Act, 1971, and its provisions therefore apply to their proceedings. While some of their powers, authority and responsibilities are clearly set forth in The Line Fences Act, 1979, there are others that arise out of The Statutory Powers Procedure Act, 1971. Particular attention should be given to the sections dealing with conduct of proceedings (hearings) and maintenance of transcripts or other records. Bulletin 31 on the Statutory Powers Procedure Act, 1971, gives a brief description of this statute and indicates some of its implications for municipal councils and staff.

Because fences, or rather the lack of fences and/or the failure to maintain them, create the possibility of cattle getting into crops owned by another, or simply straying onto other people's property, The Pounds Act is important. The main points to recall are that, in most cases, The Pounds Act will

apply and NOT The Line Fences Act, 1979, and as a general rule the onus (and liability) is on the owner of cattle to ensure that they do not stray. It seems that the best course of action for a cattle owner to take might well be to build a suitable fence himself, and, if he has obtained an award from fence-viewers, to press his neighbour to comply with the award.

Various provisions of The Municipal Act are concerned with fencing, directly or indirectly. Probably the most important are paragraphs 19 to 24, inclusive, of section 354(1), especially 19, which authorizes councils to pass by-laws "For prescribing the height and description of lawful fences".

These are not the only acts and regulations dealing with fences, but they are the ones that probably will be encountered most frequently. Special situations or particular government authorities may be covered by provincial or federal legislation, such as fences along highways, or erected by school boards, cemetery owners and railway companies. Furthermore, there are various fences other than line fences.

Since it would take a considerably longer document that this to cover all types of authorities and problems with fencing, this bulletin focuses on problems with line fences most likely to be encountered by the municipality.

DEFINITIONS

There are no hard and fast rules defining precisely what is, or is not, a fence. Nor need a line fence be on a property line. For example, the nature of the terrain may make it practical to erect the fence off the property line, but it will still be a line fence. The term "lawful fence" is encountered, and refers to a matter of law rather than a matter of fact.

One of the ways of identifying a line fence is to have a written agreement between neighbours. The agreement then define whatever exists -- hedge, wall, stumps -- as a line fence, and further identifies where it is.

Even where a written agreement exists, it may not be legally acceptable if statutes, regulations or by-laws have been passed that set restrictions or standards as to fencing. Such condition may relate to such matters as materials used, height, location, requirements or prohibitions, rights or responsibilities. For example, in order to prevent disputes, a municipality, a committee of adjustment, can (under The Planning Act) set a minimum standard of fence to be provided along property lines as a condition of land severances or sub-division agreements.

Because of differences in legal definitions given in various statutes and regulations and of interpretations established in case law, a legal opinion should be sought for terms not specifically defined in a particular piece of legislation.

THE CLERK'S ROLE

There are three main aspects to the role of the clerk in regard to fences, and particularly line fences. These are:

- Statutory
- Advisory
- Problem Prevention.

1. Duties

The duties of the clerk in connection with The Line Fences Act, 1979 are:

a) to prepare by-laws on decision of council, such as:

- the by-law appointing fence-viewers
- a by-law under The Municipal Act setting forth minimum standards for fencing (examples of these by-laws can be found as Appendix c);

b) to arrange meetings, including proper notification of all concerned;

c) to maintain records including those of meetings, actions taken, and specific documents such as statements, forms, agreements;

d) to prepare documents such as agreements and various forms.

Because of the importance of ensuring that all proper actions are taken on time, and to record this information in case it is needed by fence-viewers or the courts, most clerks maintain a file for each case of dispute on line fences. The file is opened as soon as a request is received, and a running record kept until the matter is complete. Since the problem relates to

properties and awards may be registered, such a file may be identified by the property of the person initiating proceedings with references to the adjacent property and the names of the disputants. If the properties are in two municipalities, then in all likelihood there will be a file in each municipality. In that case, assuming an owner in municipality A wants to get his neighbour in municipality B to maintain a fair portion of the fence, the clerk of B will have the initial request and the bulk of the files.

One method of ensuring that all actions are taken and the date of occurrence recorded is to maintain a checklist, starting as soon as a request for fence-viewing is received. Richard Austin, the clerk-treasurer of the Township of Edwardsburgh, developed such a checklist that we have expanded to include form numbers. It will be found as Appendix B to this bulletin.

An example of the need to ensure that action is taken quickly relates to fence-viewers' fees. Since the fence-viewers' fees cannot be paid until the time for appeal has expired, and there are 15 days in which to file an appeal after the award is received by the owner, the clerk must get certified copies to the people involved without delay.

Where the properties are in two municipalities, X and Y, and the owner in X wants the owner in Y to look after this fence, he notifies the clerk of municipality Y, who must ensure that the clerk of the other municipality receives all necessary notices and documents.

Most problems and questions from the public can be handled by informal discussions or letters. However, inevitably some will result in formal proceedings. Readers are urged to obtain a copy of The Line Fences Act, 1979, so that they will be aware of all statutory requirements.

2. Advisory

The advisory function provided by the clerk can be invaluable to the municipal corporation and its citizens. In fencing matters, the clerk's role -- informing, educating and assisting people in respect of their rights and obligations, and the procedures to follow -- is an integral part of the process.

Three main groups of recipients of his advice are:

- members of Council, who must be made aware, not only of statutory requirements and procedures, but also of customs or practices not specifically covered in legislation;

- fence-viewers who require information as to municipal by-laws as well as procedures. Some municipal clerks run training programs or workshops for new fence-viewers;

- citizens, who look to the clerk for advice and information on everything, even on matters not within his jurisdiction.

As Bulletin 32, "Highlights of the Line Fences Act, 1979", pointed out, probably the most important job the clerk has is heading off trouble before it starts by having neighbours resolve their dispute without undertaking proceedings under legislation. If a municipal clerk faces many inquiries each year, he might consider developing a "Citizens Information Kit" as was done by John Nigh of the Borough of Scarborough. Such a kit may also be a useful basic training aid for other interested parties.

In dealing with councils and fence-viewers, it is often useful to have background material to which reference can be made.

Some clerks find bulletins such as this useful as handouts and as a basis for discussion. A picture is worth a thousand words, so a diagrammatic illustration of the sequences of activities under the situations covered by the Line Fences Act,

. initial fence-viewing
. appeal
. re-attendance

may also be helpful. The following flow-charts represent one type of procedure-illustration.

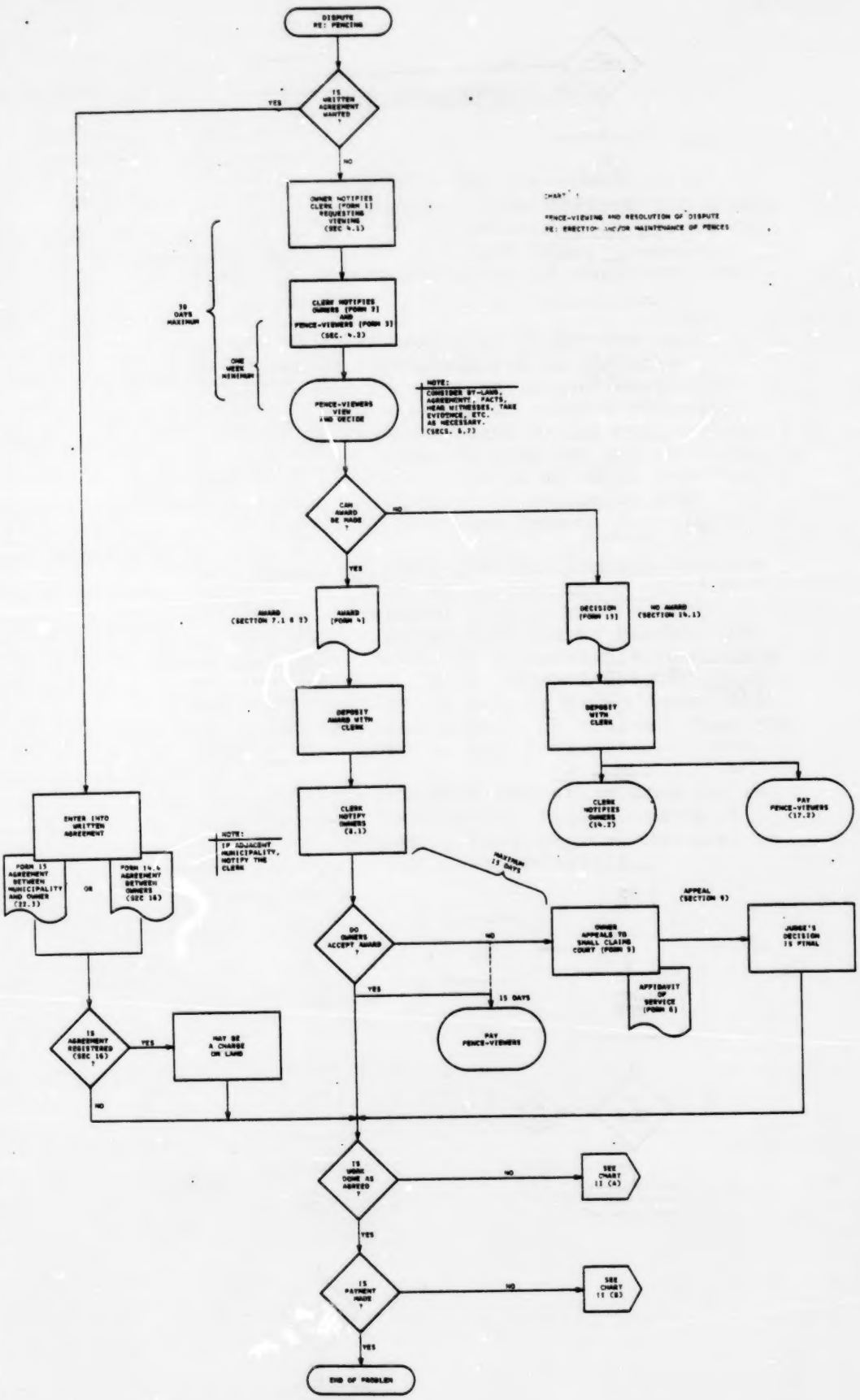
In the following flow-charts, the diamond-shaped symbols represent decision points. At each of them, a question is asked that can be answered "Yes" or "No", each answer starting a different set of activities. The diagram is read from the top down, and arrows indicates the flow, or sequence.

3. Problem Prevention

Some aspects of problem prevention have been mentioned under the advisory role and, indeed, the matter of keeping adequate records also prevents problems. The last section of this bulletin will consider some of the problems encountered most frequently, and possible solutions.

The clerk of the municipality is familiar with his own municipal environment and often personally acquainted with the people who live there. Thus, he is in a good position to be aware of potential problems in his own municipality. If at all possible, he will try to prevent the problem situation from arising at all. Where it cannot be avoided, he will want to have one or more possible solutions ready in advance.

The better a clerk does this job, the more likely it is that his actions will not be appreciated. However, he can find solace in knowing that he did a good job, and will be rewarded by not having masses of paper-work and records to maintain and by keeping angry neighbours away from his door.


DISPUTE RE: FENCING
IS WRITTEN AGREEMENT WANTED ?
YES
NO
OWNER NOTIFIES CLERK (FORM 1) REQUESTING VIEWING (SEC 4.1)
30 DAYS MAXIMUM
ONE WEEK MINIMUM
CLERK NOTIFIES OWNERS (FORM 2) AND FENCE-VIEWERS (FORM 3) (SEC. 4.2)
FENCE-VIEWERS VIEW AND DECIDE
NOTE: CONSIDER BY-LAWS, AGREEMENT, FACTS, HEAR WITNESSES, TAKE EVIDENCE, ETC. AS NECESSARY. (SECS. 6,7)
CHART I
FENCE-VIEWING AND RESOLUTION OF DISPUTE RE: ERECTION AND/OR MAINTENANCE OF FENCES
CAN AWARD BE MADE ?
NO
YES
AWARD (SECTION 7.1 & 2)
AWARD (FORM 4)
DECISION (FORM 15)
NO AWARD (SECTION 14.1)
DEPOSIT AWARD WITH CLERK
DEPOSIT WITH CLERK
CLERK NOTIFIES OWNERS (8.1)
CLERK NOTIFIES OWNERS (14.2)
PAY FENCE-VIEWERS (17.2)
ENTER INTO WRITTEN AGREEMENT
FORM 15 AGREEMENT BETWEEN MUNICIPALITY AND OWNER (22.3)
OR
FORM 14.4 AGREEMENT BETWEEN OWNERS (SEC 16)
NOTE: IF ADJACENT MUNICIPALITY, NOTIFY THE CLERK
MAXIMUM 15 DAYS
APPEAL (SECTION 9)
DO OWNERS ACCEPT AWARD ?
NO
YES
OWNER APPEALS TO SMALL CLAIMS COURT (FORM 9)
JUDGE'S DECISION IS FINAL
AFFIDAVIT OF SERVICE (FORM 8)
15 DAYS
PAY FENCE-VIEWERS
IS AGREEMENT REGISTERED (SEC 16) ?
YES
MAY BE A CHARGE ON LAND
NO
IS WORK DONE AS AGREED ?
NO
SEE CHART II (A)
YES
IS PAYMENT MADE ?
NO
SEE CHART II (B)
YES
END OF PROBLEM

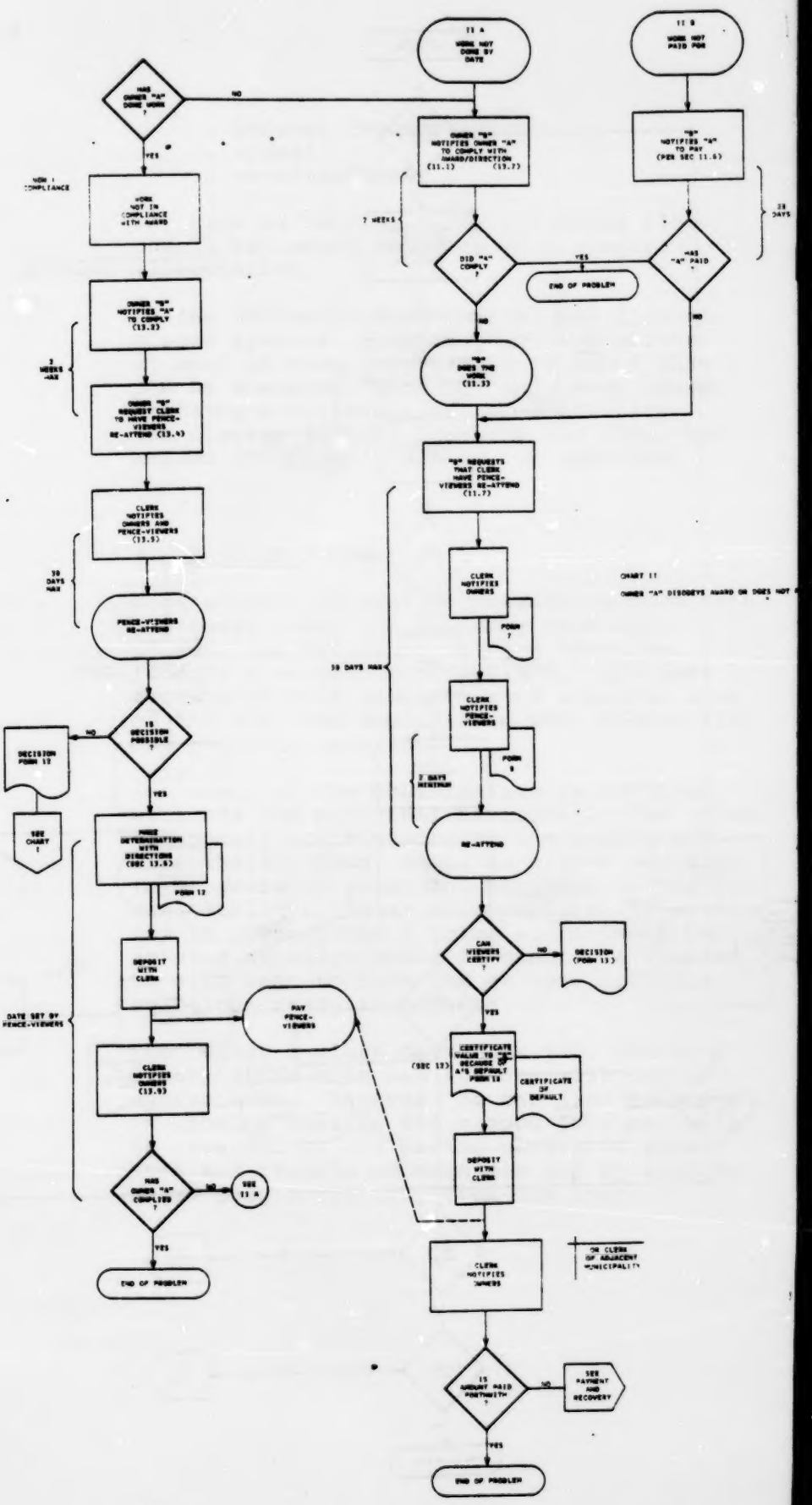


CHART II

OWNER "A" DISOBEYS AWARD OR DOES NOT

THE TREASURER'S ROLE

In many municipalities the treasurer's function is combined with that of the clerk. In any event, it is necessary to record his actions also on the case file; therefore these have been included in the checklist (Appendix B).

In The Line Fences Act, 1979, the main function of the treasurer is to make payments for various costs and services when they are due and to ensure recovery from the person adjudged to be responsible, if necessary, placing them on the collector's role and handling them as if they were taxes. (This role is covered in Bulletin #32, "Highlights of The Line Fences Act, 1979".)

In regard to costs paid to the appropriate person according to by-law under section 12.6, the treasurer simply handles the matter in a similar fashion to taxes. If, on the other hand, no payment has been made to the person to whom payment is due, then the municipality is acting as an agent and an accounts payable must be created when the amount is placed on the roll.

The type of cost that may arise, how it is incurred and determined, initial payment and later recovery, have been summarized on the next page for easy reference.

COSTS AND RECOVERY TABLE
LINE FENCES ACT, 1979

TYPE OF COST	DETERMINATION OF AMOUNT	PAYMENT	RECOVERY
1. FEES OF FENCE-VIEWERS	Set by Council By-law (S.2) Specified by fence-viewers re re-attendance for certificate, etc. (S.13.6)	(S.17) BY MUNICIPALITY - Re: Award - after time for appeal (15 days from deposit or after appeal S.9.1) - Re: Certificate, Determination Decision; - when deposited	BY PERSON ADJUDGED FORTHWITH OR PLACE ON COLLECTOR'S ROLL As above
2. SURVEYOR'S FEE (7,6)	Same as if in Small Claims Court (17.1)	BY MUNICIPALITY SAME AS FENCE-VIEWERS	As above
3. JUDGE'S EXPENSES (APPEALS)	Out-of-pocket (10.1)	BY MUNICIPALITY (10.1)	As above
4. SHARE OF COSTS INCURRED (11.6)	AWARD	(11.6) ADJOINING OWNER WITHIN 28 DAYS	IF NOT PAID RE-ATTEND AND CERTIFY (S.12)
5. a) VALUE OF WORK DONE (11.3) b) Repairs re tree damage (20.2)	Incurred by owner due to non-compliance	(11.3) ADJOINING OWNER 2 WEEKS AFTER BILLING	As above
6. COSTS OF PROCEEDINGS a) Witnesses Fees b) Other - transcripts, administration TOTAL OF 4 + 6 or 5 + 6	Same as if in Small Claims Court (17.1) (actual costs) Apportioned by fence-viewers (12.2 & 3)	OWNER CHOOSES a) Small Claims Court (12.9) levied against goods and chattel OR b) Recover via municipality: Owner must apply in writing (12.5) i) if a by-law exists under 12.6 Treasurer pays forthwith and places on collector's roll ii) if no by-law, place on collector's roll for payment to owner when received	

NOTES

A. If payer in adjacent municipality, the clerk notifies clerk of adjacent municipality who places on roll, collects and remits to clerk who gave notice (17.3)

B. If payor in unorganized territory, recover by municipality as personal debt (17.4)

COMMON PROBLEMS -- PREVENTION AND CURE

Problems in regard to line fences are many and varied, but in the majority of cases are a result of change -- change in ownership, change in use of land, change in personal relationships and sometimes changes in legislation.

Although there is no universal panacea for line-fences problems, a great many disputes can be resolved by one simple means -- a written agreement between neighbours, officially registered. Form 14 provides the basic outline for such an agreement. Note also that municipalities can enter into agreements with adjoining owners and have them registered (section 22.3).

A second type of problem arises from improper procedures, such as errors or omissions in notifications or records. These are the easiest to prevent, and the municipal clerk is the key person in ensuring that all things are done properly, both in regard to these matters for which he is directly responsible and also by advising or instructing others in regard to necessary procedures that they must follow. This second type of problem is more easily prevented than the first.

Clearly this bulletin cannot cover all of the problems that may be encountered by the municipality in regard to line fences. This section will therefore concentrate on examples that seemed to be important to councillors, clerks and fence-viewers who participated in the series of seminars. Some of these problems can only be answered in a court of law, but even then there are procedures and records that may be of assistance in arriving at a decision.

These problems and cases are organized into the following sequence:

1. Municipal policies and procedures
2. Initiation of proceedings
3. Fence-viewers hearings/viewings
4. Decisions on responsibilities
5. Decisions on costs
6. Appeals
7. Other Problems

1. Municipal Policies and Procedures

a) The Line Fences Act, 1979, applies to the lands of municipalities and local boards (s. 22) but not to municipal roads (s. 24). It has been pointed out that this could present a potential public expense in the case of vacant land or parkland.

b) Fence-viewers do not have an easy job. It can be particularly difficult if there is no municipal by-law that gives them guidelines for standard fencing. Thus they may have to spend considerable time or hear much evidence as to what is appropriate in particular circumstances. This adds to the cost of proceedings and may lead to appeals. Such problems may be prevented by passing a by-law under section 354(1) paragraph 19 9f The Municipal Act.

The by-law could include fencing standards or requirements for rural or urban. Discussions with other municipalities, the Rural Ontario Municipal Association (R.O.M.A.) or the Ministry of Agriculture and Food could be helpful when considering fencing by-laws and matters of policy.

c) A municipality may not have needed fence-viewers in the past and, of course, there is no obligation to pass a by-law engaging them until the need arises. However, it may be quite difficult, if not impossible to find and train them on short notice. Therefore, it could be useful to have a short list of people who are willing and able to serve if need arises, and to pass a by-law to appoint them so that everything is ready to go if required.

d) There are no restrictions as to who may be a fence-viewer, possibly because they may not be easy to find. It has even been suggested that one municipality could appoint the same fence-viewers that are used by another municipality.

e) The municipality is now required to set the remuneration of fence-viewers. This fee will vary according to local circumstances. However, it must be on a per diem basis only, and there is no provision in the legislation for travel expenses or for payment on a per viewing basis.

f) A problem that may be one of perception rather than actuality may arise where appearances might seem to favour one party over the other. For example, where the disputants are a farmer and a cattleman and all three fence-viewers are farmers, there might be the appearance of bias if the award is anything but 50/50. To avoid this, some municipalities try to keep a list of fence-viewers from which they can select a clear mix of types. Similarly, the use of fence-viewers who do not live near the disputants tends to relieve personal problems of fence-viewers as well as avoiding the appearance of bias.

2. Initiation of Proceedings

A) An owner's rights to have fences constructed and maintained, to appeal, to have fence-viewers re-attend and to recover a fair share of his costs, are all firmly esconced in The Line Fences Act, 1979. But the onus is upon him to initiate proceedings at any stage so that his rights are translated into action. If he chooses not to exercise his rights then he may find himself with needless expenses

or responsibilities. For example, if he does not attempt to have his neighbour maintain a portion of a fence, he himself could become responsible for more than his original share if the neighbour sold part of his property that affected their common boundary.

Similarly, he has a right to recover costs through the municipal tax rolls, but he must take positive action requesting this be done.

b) Problems of an owner retracting a verbal request to get the fence-viewers out will be avoided by obtaining Form 1 from the owner. All the clerks at the seminars agreed that, while the legislation may indicate Form 1 to be optional, they would not proceed without a written request.

This serves a number of purposes. It ensures the owner is serious, it provides a legal description of the properties, it states that the boundary is not in dispute, and it provides all parties with written information.

c) It may be that what is really in dispute is the location of the property line itself. In this case, the fence-viewers have no jurisdiction or power. Information on Form 1 provides information on this point.

d) The matter of properties in adjacent municipalities is a recurring problem. It must be remembered that if owner A wants owner B to pay a share of the fence and therefore has to call upon fence-viewers, then he must make a request (by Form 1) to the clerk of B's municipality.

3. Fence-Viewers Hearings and Viewings

a) Some fence-viewers make a practice of calling the disputants together and attempting to resolve the matter amicably and quickly without a viewing. Some clerks do the same thing. If successful, this can save time, trouble and expense to all. At its best, it results in a written agreement; at the least, it brings the problem that really exists to the attention of the clerk or fence-viewers.

b) It is important to carry out all procedures, to maintain written records, to consider all pertinent matters and to put into writing the basis and reasons for the award.

Improper procedures may result in an award being overturned. For example, the fence-viewers may not have given all witnesses the opportunity to speak, nor have admitted all the evidence. This problem can be prevented by ensuring that fence-viewers are made aware of this possibility, and of their responsibilities under The Statutory Powers Procedure Act, 1971

c) A problem frequently encountered is where one property is sold and the new owner puts it to a different use than before, such use possibly requiring a different type of fence. In such a case, it has been suggested that the fence-viewers be called to attend, even if a previous award existed.

4. Decisions on Responsibilities

Generally the award will allocate responsibilities on a 50/50 basis, (section 7(1), paragraph (b)) and some fence-viewers insist that no other basis is fair. However, others have

pointed out that circumstances may warrant a division other than 50/50. It is also possible to give an equal share by a number of alternate means. Here are some examples of difficult situations and possible options.

a) In some situations, it may be that one owner has the necessary equipment to put up or maintain a fence while his neighbour would have to hire a contractor to do the work. If this is the case, the fence-viewers may well make an award that has the first owner do the actual work and the second owner responsible for the cost of his part of the fence, including labour and material.

b) It often happens that the dispute is not whether a fence should be built, but rather the type of fence. For example, one owner wants or needs a much superior quality than the other. The fence-viewers may rule that the first owner builds the entire fence, and that the second owner pays half of what a "standard" fence would cost. Of course, this allocation would be made more difficult if the municipality had no by-law regarding standards for fencing. On the other hand, they might rule that each benefits equally so an equal share is fair.

In the absence of such a by-law, the fence-viewers must consider what exists in the area and what is suitable for the purpose.

c) Where a line fence goes over uneven terrain, a problem may occur. A case used in the seminars was where the line ran along a swampy area and then a rocky area. Here are some possible awards:

. divide each difficult portion 50/50 and have each owner responsible for one-half;

- consider the work and expense required to construct and maintain each section and make the dividing point at an appropriate distance so that each has approximately an equal share of the work and costs;

- go around the swampy area (this does not convey title) and divide the length equally;

- have one owner do all the work and bill the other owner for one-half. Any of these suggestions might be acceptable. The important point is that there is no set rule and an award should therefore be supported by a sound rationale.

d) A problem brought out at the seminars related to the erection of a fence around a swimming pool, part of which was on the property line. The question was whether the neighbour should be required to pay for half the cost of that portion of the fence.

Here again, there were a number of different opinions of which the most prevalent were:

- 50/50 because both benefit;

- 50/50 for whatever would be "normal" with the swimming pool owner paying the extra to meet safety requirements;

- no award because the swimming pool fence is obligatory under separate legislation and is not a line fence, particularly if it only goes a short distance along the line.

Each of these decisions could be supported by fence-viewers and each could be a fair "judgement call" on the part of the fence-viewers.

5. Decisions on Costs

Generally speaking, the allocation of costs of proceedings will be on the same basis as the allocation of responsibility and costs of erecting or maintaining a fence. However, there may be circumstances that warrant a departure from the norm.

Sometimes one party to a dispute will be unreasonable, perhaps using delaying tactics and insisting upon unnecessary proceedings. If the fence-viewers feel this to be the case, they may well allocate all costs of proceedings to that party, regardless of the cost allocation in regard to the fence. Telling that person what is likely to occur may help to prevent this problem.

6. Appeals

Although the appeal procedure is to the clerk of the court and not the clerk of the municipality, it is well for the municipality to be aware of the nature of appeal procedures and to be kept informed of the status and results of proceedings. The procedures are simple and inexpensive in a small claims court, so much so that legal representation is usually unnecessary. The clerk of the court is usually very helpful to appellants and others.

As with other proceedings under The Line Fences Act, 1979, the optimum situation is to resolve disputes without using formal procedures.

Many problems that might arise should a case be taken to court are readily prevented by ensuring that adequate records are maintained, including dates of action and copies of documents. It is also useful for the fence-viewers to give a written reason for their decision, particularly where the allocation of costs is other than 50/50.

The more information and written records the judge has as evidence that procedures were proper and that a decision is reasonable the less likelihood there will be of changing the award upon appeal.

7. Other Problems

a) When a piece of property is sold, whether intact to one person or divided into two or more lots or parcels, numerous problems can and do arise as to who is responsible for what part of fences, including maintenance of fences by new owners, and who may now be responsible for building an entire fence up to a previously determined level. These problems are often complex and present difficulties to fence-viewers. The best solution is for owners to take action to ensure that their neighbours carry out their responsibilities concerning fences. Failing this, some problems can be prevented by ensuring that any severance or subdivision agreement considers fencing matters.

b) Fencing problems can often arise when a person from an urban environment acquires property in a rural area. Generally these problems arise through lack of knowledge, and can be prevented by information. Information for these situations is often available locally from residents and the municipal clerk, or from the Ministry of Agriculture and Food and its agricultural representatives.

c) It is important for fence-viewers to assure themselves that all appropriate procedures have been followed, particularly in the case of re-attendance where work has not been done or payment has not been made.

Thus, they should ask to see copies of notices served by one owner upon another, and ensure that sufficient time has been allowed to comply or pay. If improper procedures have been followed, they cannot make a certificate or determination, but must prepare a decision (Form 13) and file it with the clerk.

d) The municipal clerk should make sure that the fence-viewers are aware of these and other responsibilities, as well as of their authority and rights.

SUMMARY

These are only a few of the many problems that have been raised and that are envisaged in regard to line fences. As can be seen, many of them can be prevented by having by-laws, agreements and standards in place as early as possible. Once an owner realizes that he has no choice and will have to pay a fair share in the long run, he will probably be more reasonable and none of the official regulations and procedures will need to be applied.

Clearly, this bulletin cannot cover all possible situations, nor can legislation. Some matters will eventually have to be settled in a court of law. However, it is hoped that the material contained herein and in other publications can keep such cases to the minimum.

Suggested references include the following:

Revised Statutes of Ontario (R.S.O.)
Bulletin #30, The Interpretation Act
Bulletin #31, The Statutory Powers Procedure Act, 1971
Bulletin #32, Highlights of The Line Fences Act, 1979
"Line Fences in Ontario" by M. Smither

APPENDIX A

PRESCRIBED FORMS

ONTARIO REGULATION 666/79

under The Line Fences Act, 1979

FORMS

1.—(1) The request for fence-viewers to be given to the clerk of a municipality by a person desiring to initiate proceedings under subsection 1 of section 4 of the Act may be in Form 1.

(2) The notice required to be given by the clerk of a municipality to an owner or an occupant under subsection 2 of section 4 of the Act shall be in Form 2.

(3) The notice required to be given by the clerk of a municipality to a fence-viewer under subsection 2 of section 4 of the Act shall be in Form 3. O. Reg. 666/79, s. 1.

2. An award of fence-viewers made under subsection 1 of section 7 of the Act shall be in Form 3. O. Reg. 666/79, s. 2.

3.—(1) The notice of appeal served by an owner under subsection 1 of section 9 of the Act shall be in Form 5.

(2) The affidavit of service of a notice of appeal required to be filed by an owner, under subsection 1 of section 9 of the Act shall be in Form 6. O. Reg. 666/79, s. 3.

4.—(1) The notice required to be given by the clerk of a municipality to an owner or occupant under subsection 8 of section 11 of the Act shall be in Form 7.

(2) The notice required to be given by the clerk of a municipality to a fence-viewer under subsection 8 of section 11 of the Act shall be in Form 8. O. Reg. 666/79, s. 4.

5.—(1) A certificate of default made by fence-viewers under clause *a* of subsection 1 of section 12 of the Act shall be in Form 9.

(2) The certificate of default made by fence-viewers under clause *b* of subsection 1 of section 12 of the Act shall be in Form 10.

(3) A notice given under subsection 8 of section 12 of the Act by the treasurer of a municipality to an adjoining owner against whom an award is being enforced shall be in Form 11. O. Reg. 666/79, s. 5.

6. A determination with directions made by fence-viewers under subsection 6 of section 13 of the Act shall be in Form 12. O. Reg. 666/79, s. 6.

7. A decision made by fence-viewers under subsection 1 of section 14 of the Act shall be in Form 13. O. Reg. 666/79, s. 7.

8. An agreement in writing registered under section 16 of the Act shall be in Form 14. O. Reg. 666/79, s. 8.

9. An agreement in writing registered under subsection 3 of section 22 of the Act shall be in Form 15. O. Reg. 666/79, s. 9.

Form 1

The Line Fences Act, 1979

REQUEST FOR FENCE-VIEWERS

I, ..., being the owner of certain lands

being

(description of lands sufficient for registration in the appropriate Land Registry Office)

do hereby serve notice that I desire and request that three fence-viewers attend, view and arbitrate in the matter of a dispute over the responsibility for a line fence marking the boundary between my land and that of an adjoining land

owner, namely: ....., whose lands may be more particularly described as:

(description of lands sufficient for registration in appropriate Land Registry Office)

.....

.....

.....

I understand that the descriptions of my land and the land of ..... provided above are the descriptions that will be used in the fence-viewers' award and in any certificate subsequently made by the fence-viewers in respect of the award and therefore have ensured that the descriptions are accurate and are sufficient for registration in the appropriate Land Registry Office.

The status of the line fence marking the boundary of our adjoining lands is:

PLEASE CHECK APPROP-RIATE BOX

☐ — non-existent at the present time

☐ — in need of reconstruction

☐ — in need of maintenance, repair and keeping-up

*The boundary line between our lands is *not* in dispute. *

Dated at the ..... of ..... this ..... day of ....., 19 .

Witness *Person desiring fence-viewers to view and arbitrate*

* Fence-viewers have no jurisdiction to resolve boundary disputes.

Advisable to have this form made in triplicate, (the original to be retained by the clerk, with one copy to be given to each of the adjoining owners).

O. Reg. 666/79, Form 1.

Form 2

The Line Fences Act, 1979

(Section 4 (2))

CLERK'S NOTICE TO PARTIES (DISPUTE)

Take notice that three fence-viewers of this locality will attend at the lands described below on:

Day .....

Month .....

Year .....

Hour .....

to view and arbitrate on a line fence between the lands of:

(name of owner who initiated proceedings)

being

(description of lands sufficient to identify the property whether by municipal address or otherwise)

and the lands of

(name of owner of adjoining land)

being

(description of lands sufficient to identify the property whether by municipal address or otherwise)

AND take notice that if a party, having been notified, does not attend the fence-viewing, the fence-viewers may proceed in that party's absence and, except as otherwise provided in *The Line Fences Act, 1979*, he will not be entitled to any further notice in the proceedings.

Dated the .....day of

....., 1979.

TO: (Owner or Occupant Notified)

.....
(clerk or other designated person)

.....
(person desiring fence-viewers to view and arbitrate)

* Section 5 of *The Line Fences Act, 1979*, states as follows:

Where an occupant who is not an owner of the land is given a notice under this Act, he shall immediately inform the owner of the notice, and, if he neglects to do so, he is liable for all damage caused to the owner by such neglect.

O. Reg. 666/79, Form 2.

Form 3

The Line Fences Act, 1979

(Section 4 (2))

CLERK'S NOTICE TO FENCE-VIEWERS (DISPUTE)

Take notice that I require you to attend at the lands described below on:

Day .....

Month .....

Year .....

Hour .....

to view and arbitrate on a line fence between the lands of:

(name of owner who initiated the proceedings)

being

(description of lands sufficient to identify the property whether by municipal address or otherwise)

_____

_____

and the lands of

(name of owner against whom proceedings initiated)

being

(description of lands sufficient to identify the property whether by municipal address or otherwise)

_____

_____

Clerk or other
designated person

TO Fence-Viewers

O. Reg. 666/79, Form 3.

Form 4

The Line Fences Act, 1979

(Section 7 (1))

AWARD

We, the fence-viewers of (*name of locality*) having been called upon to view and arbitrate for purposes of settling a dispute over a line fence between the lands of (*name of owner who initiated proceedings*) being: (*description of lands sufficient for registration in the appropriate Land Registry Office*), and the lands of (*name of owner against whom proceedings initiated*) being (*description of lands sufficient for registration in the appropriate Land Registy Office*), and having examined the lands and duly acted according to *The Line Fences Act, 1979*, award as follows:

For descriptions use the descriptions provided in Form 1, if used, and attach a Schedule if required

1. A fence to mark the boundary line between the adjoining lands described above shall be

Check appropriate box

[ ] constructed, maintained and kept up

[ ] reconstructed, maintained and kept up

[ ] repaired, maintained and kept up.

2. A. .....shall be responsible for constructing/reconstruct ing/repairing (*indicate appropriate term*) maintaining and keeping u that part of the fence that commences at (*description of point*) and end at (*description of point*);

Complete A, B or C, whichever is appropriate

.....shall be responsible for constructing/reconstruct ing/repairing (*indicate appropriate term*) maintaining and keeping u that part of the fence that commences at (*description of point*) and end at (*description of point*).

or

B. .....shall be responsible for constructing/reconstruc ing/repairing (*indicate appropriate term*) maintaining and keeping u

the fence and ..... shall pay to him one-half of the co of the work incurred as a result of this award upon being notified of t amount of such costs in accordance wich *The Line Fences Act, 1979*.

or

C. (Where the fence-viewers are of the opinion that an award in the term of 2A or 2B would be unjust, the fence-viewers may make whatev award they consider appropriate).

3. The fence shall be of the following description (*state the kind of fence height, material, etc.*)
(attach Schedule, if necessary)

.....

4. The work shall be commenced not later than the ..... day

....., 19.., and shall be completed not later tha

the ..... day of ....., 19...

5. The costs of these proceedings are fixed at $..... determin as follows: (*set out items and amounts making up total costs the proceedings*).

Item	*Amount*
.....	.....
.....	.....
.....	.....

(*Name of one adjoining owner*) shall pay .....% of the costs of this proceeding, namely, $.....

(*Name of other adjoining owner*) shall pay .....% of the costs of this proceeding, namely, $.....

Dated the ..... day of ..... 19...

(signature of Witness)

.....

(Signatures of Fence-Viewers)

.....

.....

.....

Form 5

The Line Fences Act, 1979

(Section 9 (1))

NOTICE OF APPEAL FROM FENCE-VIEWERS' AWARD

In the .....Small Claims Court of the .....of .....

BETWEEN: .....Appellant

— and —

.....Respondent

TAKE NOTICE that I, ...appeal to the .....Small Claims Court of the .....of .....from the award made by the fence-viewers of (*locality*) .....on the .....day of .....19.... a certified copy of which award is attached, and ask that (*set out briefly what is desired*)

.....

.....

.....

.....

upon the following grounds: (*state the grounds clearly but briefly*) .....

.....

.....

.....

.....

Dated this .....day of .....19....

To: *Respondent Owner*
Home address

Owner instituting appeal.

_____

Home address

And to: (List fence-viewers and Home addresses)

And to: (The clerk of the .....Small Claims Court of the .....of .....)

O. Reg. 666/79, Form 5.

Form 6

The Line Fences Act, 1979

(Section 9 (1))

AFFIDAVIT OF SERVICE OF NOTICE OF APPEAL

in the .....Small Claims Court of the.....of .....

BETWEEN .....Appellant

— and —

.....Respondent

I.....of the.....of .....in

the.....of ....., (occupation),

make oath and say as follows:

I did on ....., the ..... day of .....19....

CHECK APPROPRIATE BOX

☐ (a) send by prepaid registered mail to the above named Respondent, of which the certificate of such registration is attached hereto

or

☐ (b) personally serve on the above named Respondent, or on a resident of the Respondent's dwelling house over the age of 18 years.

and did send by prepaid registered mail to the fence-viewers whose award is the subject of this appeal, of which the certificate of such registration is attached hereto, the Notice of Appeal required under Section 9 (1) of *The Line Fences Act, 1979*, a certified true copy thereof being attached hereto.

In effecting service, I necessarily travelled .... kilometers.

Sworn before me .....

at the .....

of ....

Signature

in the .....

of .....

this .....day of .....19..

(or a Commissioner for taking affidavits)

Clerk of the Small Claims Court

O. Reg. 666/79, Form 6.

Form 7

The Line Fences Act, 1979

(Section 11 (8))

CLERK'S NOTICE TO PARTIES (CERTIFICATION)

Take notice that three fence-viewers of this locality, will reattend at the lands, described below,

on the.....day of.....19....at the hour of.....to determine whether (*name of owner against whom award is being enforced, hereinafter referred to as Owner A*) has

obeyed the directions of the award made the.....day of.....19..., in respect of a line fence marking the boundary between his lands being (*description of the lands sufficient to identify the property whether by municipal address or otherwise*), and the lands of (*name of owner causing the notice to be given, hereinafter referred to as Owner B*), being (*description of the lands sufficient to identify the property whether by municipal address or otherwise*), and if satisfied that (*name of Owner A*) has failed to obey the directions of the award, the said fence-viewers—

1. a. Will certify the value of the work done at the expense of (*name of Owner B*), which pursuant to the award ought to have been done by (*name of Owner A*)

Delete a or b whichever is inapplicable

or

b. will determine the value of the work done by (*Name of Owner B*) and certify the amount payable by (*Name of Owner A*) as his share of the costs of the work; and

2. Will fix the costs of the proceedings, including the costs of the original fence-viewing proceedings at which the award was made, and will certify the portion of the costs payable by (*name of Owner A*) to (*name of Owner B*);

and the total amount certified may be collected from (name of Owner A) in the same manner as municipal taxes or as the amount of a judgment of a small claims court.

You are hereby notified that if you do not attend at the time and place specified above the fence-viewers may proceed in your absence and, except as otherwise provided in *The Line Fences Act, 1979*, you will not be entitled to any further notice in these proceedings.

Dated the.....day of.....19...

TO: *Owner or Occupant Notified*

Clerk (or other designated person)

* *The Line Fences Act, 1979*, section 5 states as follows:

Where an occupant who is not an owner of the land is given a notice under this Act, he shall immediately inform the owner of the notice, and, if he neglects to do so, he is liable for all damage caused to the owner by such neglect.

O. Reg. 666/79, Form 7.

Form 8

The Line Fences Act, 1979

(Section 11 (8))

CLERK'S NOTICE TO FENCE-VIEWERS (CERTIFICATION)

Take notice that I require you to reattend at the lands described below on the.....day of .....19..., at

the hour of ....., to determine whether the award made the .....day of....., 19..., in respect of the line fence between the lands of (*name of owner causing the notice to be given*) being (*description of lands sufficient to identify the property whether by municipal address or otherwise*), and the lands of (*name of owner against whom award is being enforced*) being (*description of lands sufficient to identify the property whether by municipal address or otherwise*), has been obeyed by the said (*name of owner against whom award is being enforced*) and, if you are satisfied that the award has not been obeyed and that (name of owner against whom award is being enforced) or the occupant of his land was duly notified under section 11 (1) or 11(6), to make a certification pursuant to section 12 of *The Line Fences Act, 1979*.

Dated the ..... day of ....., 19...

To: *Fence-Viewers*

Clerk

(or other designated person)

O. Reg. 666/79, Form 8.

Form 9

The Line Fences Act, 1979

(Section 12 (1) (a))

CERTIFICATE OF DEFAULT (WORK NOT DONE)

We, the fence-viewers of (*name of locality*), having been called upon to determine whether (*name of owner against whom award is being enforced, hereinafter referred to as Owner A*) has obeyed the award made the ..... day of ..... 19 . . . in respect of a line fence between his lands being (*description of lands sufficient for registration in the appropriate Land Registry Office*), and the lands of (*name of owner seeking to enforce the award, hereinafter referred to as Owner B*), being (*description of lands sufficient for registration in the appropriate Land Registry Office*), and having examined the lands and duly acted according to *The Line Fences Act, 1979*, certify as follows:

(*Name of Owner A*) has failed to obey the award made the ..... day of ..... 19 .... in respect of a line fence marking the boundary between his lands and the lands of (*name of Owner B*) in that (*give particulars of default*)

.....

.....

.....

.....

Value of Work

The value of the work done at the expense of (*name of Owner B*), which according to the award ought to have been done by (*name of Owner A*) is hereby certified to be —

X. $

Costs

The costs of these proceedings are fixed at $..... determined as follows:

Item	*Amount*
.....	.....
.....	.....
.....	.....

(*Name of Owner A*) shall pay .....% of the costs of these proceedings, namely $ .....

(*Name of Owner B*) shall pay .....% of the costs of these proceedings, namely $ .....

* Amount payable by (name of Owner A) to (name of Owner B) as (name of Owner A)'s share of the costs of these proceedings

Y. $

** Amount payable by (name of Owner A) to (name of Owner B) as (name of Owner A)'s share of the costs of proceedings under section 4

Z. $

The total amount payable by (*name of Owner A*) to (*name of Owner B*) is hereby certified to be — (Add amounts in boxes X, Y and Z)

$.....

Dated the ..... day of ..... 19....

Signature of Witness *Signatures of Fence-Viewers*

.....

.....

.....

.....

* ie: amount payable as A's share of the costs of these proceedings less the portion of that amount attributable to fence-viewers' fees

** ie: amount determined in the original fence-viewers' award as A's share of the costs of the proceedings less the portion of that amount attributable to fence-viewers' fees, and, if applicable, to the fees of a surveyor employed by the fence-viewers under subsection 5 of section 7 of the Act.

Form 10

The Line Fences Act, 1979

(Section 12 (1) (b))

CERTIFICATE OF DEFAULT (PAYMENT NOT MADE)

We, the fence-viewers of (*name of locality*), having been called upon to determine whether (*name of owner against whom award is being enforced, hereinafter referred to as Owner A*) has obeyed the award made the ..... day of ....., 19... in respect of a line fence between his lands being (*description of lands sufficient for registration in the appropriate Land Registry Office*), and the lands of (*name of owner seeking to enforce the award, hereinafter referred to as Owner B*), being, (description of lands sufficient for registration in the appropriate Land Registry Office), and having examined the lands and duly acted according to *The Line Fences Act, 1979*, certify as follows:

(*Name of Owner A*) has failed to obey the award made the ..... day of .....

19...., in respect of a line fence marking the boundary between his lands and the lands of (*Name of Owner B*) in that (*give particulars of default* .....

.....

.....

.....

The total value of the work done by (name of Owner B) at his own expense in compliance with the award is $.....

The portion of the costs of the work to be borne by (name of Owner A) as set out in the fence-viewers' award is $.....
(ie: one-half or such other portion as the award specifies)

Share of Costs of Work

The amount payable by (name of Owner A) to (name of Owner B) as (name of Owner A)'s share of the costs of the work is therefore certified to be —

X. $.....

Costs

The costs of these proceedings are fixed at $.....

Item	*Amount*
.....	.....
.....	.....
.....	.....

(*Name of Owner A*) shall pay .....% of the costs of these proceedings, namely $.....

(*Name of Owner B*) shall pay .....% of the costs of these proceedings, namely $.....

Amount payable by (name of Owner A) to (name of Owner B) as (name of Owner A)'s share of the costs of these proceedings

Y. $

Amount payable by (name of Owner A) to (name of Owner B) as (name of Owner A)'s share of the costs of proceedings under section 4

Z. $

The total amount payable by (*name of Owner A*) to (*name of Owner B*) is hereby certified to be — (Add amounts in boxes X, Y and Z)

Dated the ..... day of ....., 19...

Signature of Witness ***Signatures of Fence-Viewers***

.....

.....

....

* ie: amount payable as A's share of the costs of these proceedings less the portion of that amount attributable to fence-viewers' fees

** ie: amount determined in the original fence-viewers' award as A's share of the costs of the proceedings less the portion of that amount attributable to fence-viewers' fees, and, if applicable, to the fees of a surveyor employed by the fence-viewers under subsection 5 of section 7 of the Act.

O. Reg. 666/79, Form 10.

Form 11

The Line Fences Act, 1979

(Section 12 (8))

TREASURER'S NOTICE OF AMOUNT OWED TO MUNICIPALITY BY DEFAULTING OWNER

Take notice that the amount of $ ..... has been paid out of the general funds of the Corporation of the ..... (City, Town, etc., whichever is applicable) of ..... (Name of Municipality) to (name of owner who received payment from the treasurer, hereinafter referred to as Owner A) on the ..... day of ....., 19.., in respect of an amount owing by you to (name of Owner A) pursuant to a certificate of default dated the ..... day of ....., 19...

That amount together with interest thereon at .....% accruing from the (date of payment by treasurer mentioned above) is now due and payable by you to the said Corporation.

The amount has been placed on the tax collector's roll and may be collected together with interest thereon in the same manner as taxes and until paid is a charge upon your land.

TO: (Defaulting Owner)

.....
Municipal Treasurer

O. Reg. 666/79, Form 11.

Form 12

The Line Fences Act, 1979

(Section 13 (6))

DETERMINATION WITH DIRECTIONS

We, the fence-viewers of (*name of locality*), having been called upon to determine whether (*name of owner against whom award is being enforced, hereinafter referred to as Owner A*) has obeyed the award made the ..... day of ....., 19..., in respect of a line fence between his lands being (*description of lands sufficient to identify the property whether by municipal address or otherwise*), and the lands of (*name of owner seeking to enforce the award, hereinafter referred to as Owner B*), being, (*description of lands sufficient to identify the property whether by municipal address or otherwise*), and having viewed the work and duly acted according to *The Line Fences Act, 1979*, find as follows:

(*Name of Owner A*) has failed to comply with the award made the ..... day of ....., 19....., in respect of a line fence marking the boundary between his lands and the lands of (*name of Owner B*) in that (*give particulars of non-compliance*).

.....

.....

.....

.....

It shall be necessary for (*name of Owner A*) to take the following action to make the work comply with the award: (*specify the action required to make the work comply*)

.....

.....

.....

.....

The work shall be commenced not later than the ..... day of ....., 19....., and shall be completed not later than the ..... day of ....., 19...

The total of the fence-viewers' fees is — $.....

The amount payable by (*name of Owner A*) is — $.....

The amount payable by (*name of Owner B*) is — $.....

Dated the ..... day of ....., 19....

Signature of Fence-Viewers:

.....

.....

.....

O. Reg. 666/79, Form 12.

Form 13

The Line Fences Act, 1979

(Section 14 (1))

DECISION OF FENCE-VIEWERS WHERE NO AWARD, CERTIFICATION, ETC., IS MADE

We, the fence-viewers of (*name of locality*), having been notified pursuant to section (*check appropriate box*)

☐ 4 (2) ☐ 11 (8) ☐ 13 (5) ☐ 13 (7) of the Act,

in respect of a line fence between the lands of (*name of owner against whom proceedings initiated, hereinafter referred to as Owner A*) being (*description of lands sufficient to identify the property whether by municipal address or otherwise*) and the lands of (*name of owner who initiated the proceedings hereinafter referred to as Owner B*) being (*description of lands sufficient to identify the property whether by municipal address or otherwise*) and having attended at the said lands have decided that no (*check appropriate box*)

☐ award, ☐ certificate, ☐ determination with directions

shall be made for the following reasons — (*briefly, but clearly state reasons for decision*)

.....

.....

.....

The total of the fence-viewers' fees for this attendance is fixed at — $.....

(*Name of Owner A*) shall pay .....% of such amount, namely, $.....

(*Name of Owner B*) shall pay .....% of such amount, namely, $.....

Dated the ..... day of ..... 19....

Signature of Fence-Viewers:

.....

.....

.....

O. Reg. 666/79, Form 13.

Form 14

The Line Fences Act, 1979

(Section 16)

AGREEMENT

I, (*name of owner*) being the owner of
(*description of lands sufficient for registration in the appropriate Land Registry Office*)

and I (*name of adjoining owner*) being the owner of
(*description of lands sufficient for registration in the appropriate Land Registry Office*),

do agree that:

Please Check Appropriate Boxes:

1. ☐ A fence to mark the boundary line between the adjoining lands described above shall be constructed, maintained and kept up.

or

☐ The fence marking the boundary line between the adjoining lands described above shall be (*insert "repaired" or "reconstructed" — whichever is applicable*), maintained and kept up.

2. (*a*) .....shall be responsible for that part of the line that commences at (*description of point*) and ends at (*description of point*) and .....for that part of the line that commences at (*description of point*) and ends at (*description of point*)

Complete a or b whichever is applicable

or

(*b*) (*Name of owner responsible for entire fence*) shall be responsible for all works connected with the above and .....% of the costs of such works shall be paid to him by ..... upon notification of such costs given in accordance with *The Line Fences Act, 1979*.

3. The fence shall be of the following description (state the kind of fence, height, material, etc.)

4. The work shall be commenced not later than the ..... day of ....., 19....,
and shall be completed not later than the ..... day of ....., 19....

Dated the ..... day of ....., 19...

Signature of Witness: (Signatures of Parties)

.....

.....

.....

O. Reg. 666/79, Form 14.

Form 15

The Line Fences Act, 1979

(Section 22 (3))

AGREEMENT
(where one Party is a Municipality or Local Board)

The Corporation of the ..... (City, Town, etc. whichever is applicable) of .....

(Name of Municipality), [or where applicable — The name of Local Board)] being the owner of .....

(description of lands sufficient for registration in the appropriate Land Registry Office)

and I ..... *(name of adjoining owner)* being the owner of ..... *(description of lands sufficient for registration in the appropriate Land Registry Office)*, do agree that:

Please Check Appropriate Boxes:

1. ☐ A fence to mark the boundary line between the adjoining lands described above shall be constructed, maintained and kept up.

or

☐ The fence marking the boundary line between the adjoining lands described above shall be *(insert "repaired" or "reconstructed" — whichever is applicable)*, maintained and kept up.

2. *(a)* The Corporation of the (refer to municipality as above) [or where applicable — The (name of Local Board)] ..... shall be responsible for that part of the line that commences at *(description of point)* and ends at *(description of point)* and ..... for that part of the line that commences at *(description of point)* and ends at *(description of point)*

Complete a or b whichever is applicable

or

(b) *(Name of owner responsible for entire fence)* shall be responsible for all works connected with the above and .....% of the costs of such works shall be paid to him by ..... upon notification of such costs given in accordance with *The Line Fences Act, 1979*.

3. The fence shall be of the following description (state the kind of fence, height, material, etc.)

4. The work shall be commenced not later than the ..... day of ....., 19....., and shall be completed not later than the ..... day of ....., 19.....

Dated the ..... day of ....., 19...

(Signatures of Parties)

* The Corporation of the
(refer to Municipality as above)

per .....

.....

** [or where applicable — The (name of Local Board)

per .....

.....

....

(Signature of Witness) (Signature of other Party)

* Affix corporate seal

**If the Local Board has a corporate seal, affix it

O. Reg. 666/79. Form 15.

APPENDIX B

LINE FENCES PROCEDURES
MUNICIPAL CHECK LIST

APPENDIX B

LINE FENCES PROCEDURES
MUNICIPAL CHECK LIST

The check list provides a handy reference for the municipal clerk and treasurer, and would be a useful document to keep on file. It is designed as a reminder of when actions are to be taken and a record that they have in fact been completed.

The first page of the list is a summary of key information, such as who is involved in the proceedings and the status of the matter.

The following pages contain a list of activities that are to be done for possible situations that may arise. The list includes statutory references and provides for recording dates when actions are due and when they are completed.

This check list is intended as a guide only. Clerks should develop whatever record system suits themselves and their municipalities.

LINE FENCES PROCEDURES

MUNICIPAL CHECK LIST

IN THE MATTER OF: _____ REF. # _____

OWNERS _____ PROPERTY _____

_____ _____

FENCE VIEWERS _____

_____

_____

SUMMARY

MAJOR ACTIONS	DATES
Contacted by _____	_____
Form 1 Received	_____
Fence-viewing	_____
Award Received	_____
Appeal	_____
Re-attendance	_____
Determination	_____
Certificate	_____
Decision	_____

File closed _____

Forms on File

LINE FENCES PROCEDURES

Municipal Check List

RESPONSIBLE PERSON	ACTIVITY	REF.	FORM	TIME DUE	ACTIO DATE
	A. Request For Viewing				
Clerk	1. Inquiry by owner				
	2. Receive Request For Fence-Viewers to arbitrate	4(1)	1		
	3. Arrange Fence-viewers' date and place of arbitration	4(2)		viewing no later than 30 days	
	4. Notify Owners/ Occupants	4(2)	2	at least 7 days from date set above	
	and				
	Notify Fence-viewers	4(3)	3	as above	
	Note:				
	Dispatch Notices by Registered Mail to:	4(3)			
	Owner Calling for Arbitration;				
	Owner or Occupant of Adjoining Land; and				
	Fence-viewers Named to Arbitrate				
	-or-				
	Serve Notices in Person to Owner or Occupant				

RESPONSIBLE PERSON	ACTIVITY	REF.	FORM	TIME DUE	ACTION DATE
	Caution:				
	If Notice served in Person on Occupant of adjoining land, ensure Occupant clearly aware that Owner is to be notified	5			_____
	Note:				
	If served in Person - Recipient to be Eighteen (18) Years of age or older	4(3)			_____
Fence-viewers	5. Attend, view and arbitrate	6		within 30 days of request	_____
	6. a) Make Award	7	4		
	-or-				
	b) Decision as to no award	14(1)	13		
Clerk	7. Receive Award or Decision		4 13		_____ _____
	8. Dispatch one (1) Certified	8(1)		Forthwith	_____
	True copy to each adjoining Owner upon receipt of Award from the Fence-viewers				
	- Original Copy Retained on File - Office of The Municipal Clerk				_____
	- Certified Copies forwarded to Owners/Occupants at last known mailing address				_____

RESPONSIBLE PERSON	ACTIVITY	REF.	FORM	TIME DUE	ACTI DAT
	Caution:				
	Forward Certified Copies by Registered Mail				
Clerk	N.B.				
	If adjoining owner owns lands in other municipality	8(2)			
	- forward certified true copy of award to Municipal Clerk of adjoining owner's municipality				
	Caution:				
	Forward Certified copy of Registered Mail				
	9. Check whether the award is being appealed			15 days after owner receives	
Treasurer	10. If no appeal, pay Fence-viewers	17			
	11. Bill owner(s) for cost of proceedings per award	7(1)(e)			
	B. Appeal				
Clerk	1. If appeal, check with Clerk of Court				
	Date of appeal	9(3)			
	Find out result of appeal - Appeal Determined - Decision Noted				

RESPONSIBLE PERSON	ACTIVITY	REF.	FORM	TIME DUE	ACTION DATE
Treasurer	2. Fees of Judge - Small Claims Court Municipal Corporation of appellant Owner's municipality pays the Judge's fees on an appeal	10(2)			_____
	3. Pay Fence-viewers	17			
	4. Bill Owner(s) for costs				
	Caution: Treasurer to maintain a Schedule of all costs incurred from original call to final resolution that final appropriation of costs may be accurately made. Schedule should also provide columns to show date and how costs incurred, to whom paid, how billed and when collected				_____
	C. Work Not Done Or Payment Not Made				
Clerk	1. Receive request from Owner to have fence-viewers re-attend	11(7)			_____
	Check whether Owner has notified his neighbour properly under section 11				_____

RESPONSIBLE PERSON	ACTIVITY	REF.	FORM	TIME DUE	ACTI DAT
	2. Arrange date for Fence-viewers* to re-attend	11(8)			
	* May substitute one Fence-viewer	11(10)			
	3. Notify Owners/ Occupants	11(8)	7	at least 7 days prior to viewing	
	Notify Fence-viewers	11(8)	8	as above	
	Note:				
	Method of serving as in procedures in A.4	11(9) 4(3)			
Fence-viewers	4. Re-attend and	12(1)			
	a) satisfy themselves that correct procedures were followed per 11(1) or 11(6)				
	b) determined value of work done or default				
Fence-viewers	5. Prepare certificate				
	a) default and value	12(1)(a)	9		
	b) non-payment and deposit with clerk	12(1)(b)	10	Forthwith	

RESPONSIBLE PERSON	ACTIVITY	REF.	FORM	TIME DUE	ACTION DATE
Clerk	6. Receive certificate				_____
	7. Send copies to Owners/Occupants see procedures A.8	12(4)		Forthwith	
	8. If Owner makes application in writing, place upon roll for collection	12(5)			
Treasurer	9. If municipality has passed by-law under section 553 of Municipal Act, AND application received from Owner,				
	i) Pay Owner amount due per certificate	12(6)			_____
	ii) notify the adjoining Owner	12(8)	11	Forthwith	_____
	iii) place amount on roll for collection	12(7)			_____
	D. Non-Compliance (Work Not Properly Done)				
Clerk	1. Receive request from Owner to have Fence-viewers re-attend	13(4)			_____
	N.B.				
	Check whether Owner has notified neighbour properly	13(2),(3)			

RESPONSIBLE PERSON	ACTIVITY	REF.	FORM	TIME DUE	ACTI DAT
	2. a) Arranges date for re-attendance	13(5),(4)	4		
	Notifies Owners/ Occupants and Fence-viewers (See Procedure A.3,4)	13(5)			
Fence-viewers	3. Determine extent of non-compliance, justify determination, specify action required of adjoining Owner, date work to commence and be completed by	13(6)	12		
	4. Deposit determination with Clerk	13(9)	12	Forthwith	
Clerk	5. Send copies of determination to Owner/ Occupant (See procedures A.8)	13(9),8		Forthwith	
	Note:				
	If Owner does not obey "Determination with Directions", then procedure under C are to be followed	13(7)			
	E. Decision				
Fence-viewers	1. Amend under any of above procedures	14			
	and				
	2. Decide that no award, determination or certificate can be made				

RESPONSIBLE PERSON	ACTIVITY	REF.	FORM	TIME DUE	ACTION DATE
	3. Prepare decision	14(1)	13		_____
	4. Deposit Decision with Clerk				
Clerk	5. Notify Owners and Occupants (See A.8)	14(2),8			
	F. Unopened Road Allowance	18			_____
Clerk	1. Determine whether dispute involves an unopened road allowance	18(1)			_____
	2. -Unopened Road Allowance involved	18(2)			_____
	a) Submitted request of Section 4(1) to Council	18(2)			
	b) Response of Council received	18(2)			_____
	N.B. Approval required in order to proceed				

APPENDIX C

SAMPLE BY-LAWS

APPENDIX C

SAMPLE BY-LAWS

Here are sample by-laws used by different municipalities for particular parts of The Line Fences Act, 1979. They are included for information and assistance. Each municipality should develop its own by-laws appropriate to its own specific needs.

1. A by-law appointing fence-viewers used by the Borough of Scarborough. This is succinct and clear.

   The number of fence-viewers, term of appointment, and renumeration are all variables to be determined by council. They can also be amended. For example, the renumeration in Scarborough is now $25.00.

2. A by-law on fencing that the Township of Zorra has been using. It might be useful to municipalities wishing to develop their own by-laws under section 354(1).19 of The Municipal Act.

   This sample by-law works successfully for Zorra. However, it is suggested that section (1) would be better worded if it did not purport to establish lawful fences under any Act. This is not possible, since some types of fences for specific purposes are prescribed under a particular statute (e.g., fencing around hydro transformers is covered by regulations under The Power Corporation Act).

   Naturally, any by-law developed by a municipality should be checked by the legal advisor to that municipality.

BILL NO. 130

THE CORPORATION OF THE
BOROUGH OF SCARBOROUGH

BY-LAW NUMBER 17336

being a by-law to appoint residents ratepayers as Fence Viewers for the Borough of Scarborough.

NOW THEREFORE BE IT AND IT IS HEREBY ENACTED:

1. The following resident ratepayers are hereby appointed as Fence Viewers for the Borough of Scarborough:

(1) R.G. Humphrey

(2) B.A. Sapsford

(3) Mrs. P. Brooy

(4) C. Duncan

2. Each Fence Viewer shall be paid the sum of $10.00 for each day's work done under The Line Fences Act.

3. By-law Number 15236 is hereby repealed.

READ a FIRST, SECOND, and THIRD time and passed in open Council this 14th day of March A.D. 1977

Mayor

SEAL

Clerk

CORPORATION OF THE TOWNSHIP
OF ZORRA

BY-LAW No. 54-1978

Being a by-law to prescribe the height and description of a lawful fence.

WHEREAS, pursuant to Section 354(1)(19) of the Municipal Act, R.S., 1970 (as amended), Chapter 284, "... by-laws may be passed by the councils of local municipalities for prescribing the heigh and description of lawful fences ...";

THEREFORE BE IT NOW AND HEREWITH ENACTED THAT:-

(1) A lawful fence, for the purposes of the Municipal Act, the Lin Fences Act, or any other Act, shall be not less than 4 feet (1.22 metres) in height and may be constructed of any kind of substantial material (wire, wood, steel or aluminum), but shal not present more than 10% surface measure of resistance to win for the full height and length of the fence or any part thereo A lawful fence shall be of one of the following types of construction:-

(a) BARBED WIRE FENCE - if constructed of barbed wire, the fence shall consist of not less than 6 wires properly strained, anchored a securely fastened to posts of either wood or metal, said posts to be not more than 20 feet (6.10 metres) apart and if of wood to be not less than 4 inches (10.16 cm.) in diameter at the small end. The bottom wire to be not mor than 8 inches (20.32 cm.) above the ground.
the 2nd wire not more than 8 inches (20.32 cm.) above the first;
the 3rd wire not more than 8 inches (20.32 cm.) above the second;
the 4th wire not more than 10 inches (25.40 cm.) above the 3rd;
the 5th wire not more than 10 inches (25.40 cm.) above the 4th;
and the 6th wire not more than 10 inches (25.40 cm.) above the 5th.

(b) WOVEN WIRE FENCE - a woven wire fence shall be not less tha 4 feet (1.22 metres) in height, having a barbed wire on the top but not more t 8 inches (20.32 cm.) above the uppermost wire of the woven wire fence, all being properly strained, anchored and securely fastened to posts, said posts to be not more than 20 feet (6.10 metres) apart and, if of wood, to be not les than 4 inches (10.16 cm.) in diameter at the small end.

(c) SMOOTH WIRE FENCE - a smooth wire fence shall consist of n less than 7 wires properly strained, anchored and securely fastened to post or either wood or steel. Said posts to be not more than 20 feet (6.10 metres) apart and, if of wood, to be not less than 4 inches (10.16 cm.) in diameter at the small end and having perpendicular stays not more than 3 feet (.91 metres apart along the whole length of the fence. The 1st wire to

be not more than 4 inches (10.16 cm.) above the ground, the 2nd wire to be not more than 4 inches (10.16 cm.) above the first; the 3rd wire to be not more than 5 inches (12.70 cm.) above the second; the 4th wire to be not more than 6 inches (15.24 cm.) above the third; the 5th wire to be not more than 11 inches (27.94 cm.) above the fourth; the 6th wire to be not more than 12 inches (30.48 cm.) above the fifth; the 7th wire to be not more than 12 inches (30.48 cm.) above the sixth. A barbed wire shall be strung on the posts, above the smooth wire fence and not more than 8 inches (20.32 cm.) above the upper-most wire, being properly strained, anchored and securely fastened to the posts.

(d) CHAIN-LINK FENCE - a chain-link shall be not less than 4 feet (1.22 metres) in height, with a spacing not greater than 2 inches (5.08 cm.) measured perpendicularly within the link segments and of a wire weight not less than 9 gauge. The fence shall be securely attached to metal posts spaced not more than 10 feet (3.05 metres) apart. The fence and posts shall be manufactured of either galvanized or vinyl coat steel. The primary use of chain-link fencing is intended to be for boundary marking purposes in a residential setting and not for the containment of livestock. If it is the intent, however, to use chain link fence for livestock containment then, in addition to the 4 foot (1.22 metres) height of fence, a single strand of barbed wire shall be strung not more than 6 inches (15.24 cm.) above the fence and shall be properly strained, anchored and secured to the posts.

(e) OTHER TYPES OF FENCE - a line fence built of rails, board or poles, being horizontally placed shall have the first three of the said rails, boards or poles not more than 6 inches (15.24 cm.) apart and in the event of stakes and riders being used the fence shall be at least 4 feet (1.22 metres) in height, exclusive of stakes and riders, and a worm-rail fence shall have a crook or not more than 5 feet (1.52 metres. Where the manner of construction is such to require the use of posts, to properly support and secure the fence in position, then such posts shall be so placed that the distance between them will not be greater than the length of the boards, rails or poles horizontally placed. In no case, however, shall the distance between posts exceed 20 feet (6.10 metres).

The provisions and standards of this by-law, as herein set forth, shall be deemed to be 'minimums' only and are not designed or intended to limit or restrict the use of a greater or higher degree of standard, both in quality and construction, where the parties affected may so mutually agree amongst them.

All other by-laws, or parts of by-laws, contrary to the provisions set forth herein are now and herewith repealed.

The provisions of this by-law shall take full force and effect with the passing hereof.

By-law read a FIRST and SECOND time this 4th day of July, 1978

By-law read a THIRD time and PASSED rhia 4th day of July, 1978

ROBERT BLAIR, Mayor

SEAL

WAYNE A. JOHNSON, Clerk

This bulletin was prepared in the:

Municipal Administration Branch
Ministry of Intergovernmental Affairs
3rd Floor, Mowat Block
Queen's Park
Toronto, Ontario
M7A 1C2 **Tel. 416-965-3514**

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3rd Floor
Cambridge (Galt), Ontario
NIR 6P9
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30 Edinburgh Road N.
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OSHAWA

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KIN 5Y3
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SUDBURY

Ontario Government Building
5th Floor
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P3E IC4
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P.O. Box 5000
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TORONTO

3rd Floor, Mowat Block
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M7A IC2
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